

Exhibit 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4
5 CONSUMER FINANCIAL)
6 PROTECTION BUREAU,)
7 Plaintiff,)
8) Civil Action
9 - vs -) No. 1:15-CV-859-RWS
10)
11)
12 UNIVERSAL DEBT & PAYMENT)
13 SOLUTIONS, LLC, et al,)
14)
15 Defendants.)

16 Transcript of the Proceedings in Chambers
17 Before the Honorable Richard W. Story
18 United States District Court Judge
19 June 10, 2016
20 Atlanta, Georgia

21
22 Reported stenographically by:
23 Amanda Lohnaas, RMR, CRR
24 Official Court Reporter
25 United States District Court
 Atlanta, Georgia
 (404) 215-1546

1 APPEARANCES OF COUNSEL:

2 On behalf of
3 the Plaintiff:

Jonathan B. Engel, Esq.
Lena Amanti, Esq.

4
5 On behalf of Defendant
6 Marcus Brown:

Linda Heary Joseph, Esq.
(Appearing telephonically)

7 On behalf of Defendant
8 Global Payments Inc.:

James Douglas Baldridge, Esq.
(Appearing telephonically)

9 Benjamin Eric Horowitz, Esq.
(Appearing telephonically)

10 Michael A. Caplan, Esq.
(Appearing telephonically)

11 Benjamin Wayne Cheesbro, Esq.

12
13 On behalf of Defendant
14 Pathfinder Payment
15 Solutions, Inc.:

Kristina Michele Jones, Esq.
(Appearing telephonically)

16 On behalf of Defendant
17 Francis David Corp.:

Benjamin Ockner, Esq.
(Appearing telephonically)

18 On behalf of Defendant
19 Global Connect, LLC:

Bradley M. Elbein, Esq.

20 On behalf of Defendant
21 Varinderjit Bagga:

Carolyn Cain Burch, Esq.

22 On behalf of Defendant
23 Frontline Processing Corp.:

Joseph John Gleason, Esq.

24
25

1 (Friday, June 10, 2016, 9:30 a.m.; proceedings in
2 chambers.)

3 THE COURT: Let me get the announcements of folks who
4 are present in the room. Let's start here.

5 MR. ELBEIN: Brad Elbein for Global Connect.

6 MR. CHEESBRO: Ben Cheesbro for Global Payments.

7 MS. BURCH: Tippy Burch, might be listed on there as
8 Carolyn Burch, for Varinderjit Bagga.

9 MR. GLEASON: Joe Gleason for Frontline Processing
10 Corporation.

11 MS. AMANTI: Lena Amanti, local counsel for CFPB.

12 MR. ENGEL: I'm Jonathan Engel for Consumer Financial.

13 THE COURT: Hello, this is Judge Story. Ms. Joseph, are
14 you present?

15 MS. JOSEPH: Yes, I am, Your Honor.

16 THE COURT: Wonderful, okay.

17 And Mr. Baldridge, are you with us?

18 MR. BALDRIDGE: Yes, sir. And Ben Horowitz is also on
19 the line from my firm.

20 THE COURT: Okay. And, Mr. Caplan, are you with us?

21 MR. CAPLAN: Yes, Your Honor, Mike Caplan is here. And
22 Ben Cheesbro should be at the courthouse as well on behalf of
23 Global Payments.

24 THE COURT: We haven't seen Ben, I don't know where he
25 is.

1 Just kidding. Mr. Cheesbro is here.

2 Ms. Jones?

3 MS. JONES: Yes, Your Honor.

4 THE COURT: And Mr. Ockner?

5 MR. OCKNER: Yes, Your Honor.

6 THE COURT: Great. Did I miss anybody who is on the
7 phone? Is there anyone else on the phone that I missed?

8 Okay, thank you very much.

9 We set this down for a conference this morning because
10 there have been requests for extension of discovery. There's
11 been negotiation back and forth about perhaps agreeing to
12 some limited degree of discovery, which then caused questions
13 to arise about discovery that may not have been completed yet
14 and a desire to see how that's going to get done. And so I
15 thought it might be helpful for us to meet and try to lay out
16 a plan to move this along. Let me say just a couple of very
17 brief introductory remarks.

18 First, my understanding of the concerns of the parties
19 are that, at least from the plaintiff's perspective, a desire
20 to acquire more information, you're seeking more information,
21 you feel that you've moved expeditiously to try to get some
22 things, you were dealing with some third parties and so forth
23 and you're still trying to get some information you feel that
24 you need to get.

25 From the defendants' perspective, you've got a huge

1 cloud hanging over your head, you'd like to see this moved as
2 quickly as possible because certainly, I would expect, it's
3 affecting your business, and you feel that they've had time
4 to do it all, but also that you have asked for some things
5 that you feel should have been produced by now and have not
6 been.

7 So that causes me to think where we need to start with,
8 or what I would like to start with is hearing from the
9 plaintiff about what it is you would like to accomplish if
10 given more time for discovery. As specifically as possible,
11 what are the things you feel you still need to accomplish to
12 be able to close the door on discovery in the case?

13 MR. ENGEL: Sure. And at the outset, Your Honor, let me
14 apologize for not expressly stating in our initial letter the
15 positions of each of the parties with respect to the requests
16 for the extension. It was certainly not our intention to
17 mislead the Court. It was our expectation that each of the
18 parties would have the opportunity to present their position.
19 So, again, I apologize.

20 THE COURT: That's fine.

21 MR. ENGEL: On the merits, Your Honor, from the Bureau's
22 position, we have not had as much time to complete discovery
23 as it may seem. This complaint was filed and we sought and
24 obtained a TRO and a preliminary injunction back in March and
25 April of last year. That order allowed us to conduct

1 expedited discovery for certain defendants for certain
2 limited purposes.

3 We diligently pursued that discovery. We issued over 30
4 subpoenas and conducted half a dozen or so depositions. So
5 we moved as quickly as we could.

6 Discovery did not open with respect to what I'll call
7 the service provider defendants until about October. October
8 1st, I think, was the date that it opened, of 2015.

9 Within weeks thereafter, the Bureau issued the vast
10 majority of its written discovery.

11 There was then some delay, that the Bureau had not
12 anticipated when it initially set the schedule, of about
13 three months as the parties worked out and negotiated and
14 there was some motions practice concerning the protective
15 order.

16 I went back and kind of looked at, tried to figure out
17 why it took so long to get that together, and I think Global
18 Payments and the Bureau both exchanged initial drafts of that
19 order as early as early November of last year. There were
20 practically daily e-mails going back and forth negotiating
21 the scope. And then we filed a proposed order early
22 December. There was a cross motion. Your Honor then heard
23 oral arguments concerning that and promptly issued the order
24 thereafter in early January.

25 So only at that point did the documents really start to

1 flow. That's not to say we didn't have anything before then,
2 but we didn't want to start taking depositions until we were
3 comfortable that we had what we needed to go forward.

4 As soon as we had documents and were comfortable that we
5 had what we needed to take those depositions, we began trying
6 to schedule them, and that was the cause for another kind of
7 round of unanticipated delay.

8 And I don't suggest that any party in particular has
9 been obstructionist or dilatory, but there are a lot of
10 parties and a lot of schedules to manage.

11 With respect to Global Connect, for example, we first
12 reached out to try to schedule that deposition in February
13 and we weren't able to get it on the books until mid April.

14 With respect to Frontline, we reached out to them in
15 early March to try to meet and confer about some documents we
16 believe are outstanding. Because counsel was new to the
17 case, understandably, he needed some time to get up to speed.
18 But as a result, that deposition could not take place until
19 the end of May.

20 We've also issued some third-party discovery and have
21 tried to work cooperatively without getting the Court
22 involved to obtain what we need from those third parties.

23 And just by way of an update in that regard, the two
24 outstanding responses from HSBC and Discover, I'm told that
25 we will have those responses, I think today or early next

1 week. It will take us some time to even be able to view
2 those documents and then to review them.

3 But third parties, including Visa and Wells Fargo, who
4 we subpoenaed months ago, and have been working to negotiate
5 30(b)(6) topics, they cannot make their witnesses available
6 until July.

7 Similarly, Pathfinder issued notices to Global Payments
8 on June 1st, and Global Payments has indicated that those
9 witnesses will not be available until September.

10 So this is not a matter of any party necessarily
11 obstructing or lacking a diligent pursuit of discovery, but
12 it's really just the pragmatic result of having numerous
13 parties and numerous schedules and trying to accommodate
14 those schedules to set depositions.

15 So what we'd like to do going forward is, primarily,
16 schedule those depositions. There is --

17 THE COURT: Are they primarily 30(b)(6) depositions?

18 MR. ENGEL: I think they'll primarily be 30(b)(6)
19 depositions, and it will be of those parties who we have not
20 yet deposed and also, I think, four or five other third
21 parties.

22 THE COURT: Are the third parties generally parties or
23 entities like Visa and Wells Fargo?

24 MR. ENGEL: Yes, yes. And we recognize that the number
25 of depositions we're seeking exceeds the ten that we're

1 permitted under the rules, so we'll need to come back to the
2 Court and address that at some point too. But we have not
3 issued notices for those depositions because none of them
4 could occur within the originally scheduled time frame.

5 So it has not been for lack of diligence we haven't
6 noticed those depositions, it's just I'm not going to send a
7 notice for deposition in July when that's outside the Court's
8 authorized discovery parameter.

9 THE COURT: Let me ask you this, and I'm not going to
10 hold you to this, I'm just looking for a close, good
11 estimate, how many depositions are we talking about?

12 MR. ENGEL: Ten to 12 is my estimate at this point.

13 THE COURT: And that would be total of the parties, as
14 well as --

15 MR. ENGEL: Total remaining depositions, yes. And let
16 me add perhaps a caveat, within the last week we have
17 obtained thousands of e-mails from Marcus Brown's individual
18 personal e-mail account. Our review of those e-mails may
19 cause us to seek additional depositions, but at this point I
20 don't know what's there so we're not seeking those
21 depositions right now.

22 THE COURT: Okay.

23 MR. ENGEL: With respect to Ms. Bagga, and, frankly, all
24 the debt collector defendants, although the Court's
25 preliminary injunction would permit us to basically take

1 those depositions again, because the depositions we took in
2 expedited discovery did not count against our limit, in
3 recognition of the limited resources of those defendants, and
4 with the hopes that we may preserve assets for hopeful and
5 potential consumer restitution, we have not pursued
6 additional discovery against those defendants. And with the
7 caveat that I just mentioned, pending our review of those
8 e-mails, we don't intend to take those -- to revisit that
9 discovery.

10 Just as an illustration of our willingness to
11 accommodate those defendants, about a month ago some
12 questions were raised in our document review about
13 Ms. Bagga's involvement with some transactions. So I
14 approached counsel and I said we can schedule deposition or
15 we can get Ms. Bagga on the phone and see what she has to say
16 about this, and we did the latter. Rather than burden her
17 with the additional deposition, we said let's see if we can
18 get the information we need in a short phone call.

19 Unfortunately, it raised more questions than it answered, but
20 at least we demonstrated a willingness to pursue that route.

21 THE COURT: Aside from those depositions, in terms of
22 any document requests or discovery of that type, particularly
23 from the parties, is that fairly complete?

24 MR. ENGEL: Yes. We don't anticipate issuing another
25 round of interrogatories or requests. We would like to

1 reserve any rights we have to -- for example, we just got the
2 transcripts from the Frontline deposition, so we'd like the
3 opportunity to review those, and if it turns out there were
4 documents or seems there were documents relied on by the
5 witness that we don't have, we would like to pursue that if
6 that event does arise.

7 THE COURT: I was trying to keep up as you went through
8 some of these folks and when they would or would not be
9 available for depositions. And the last one you mentioned, I
10 wrote September but it may have been actually later than that
11 that person was going to be available. Was it --

12 MR. ENGEL: I think Global Payments has indicated that
13 its witnesses would be available either the first week in
14 September, or the last week?

15 MR. CHEESBRO: I believe that's right.

16 THE COURT: All right. So what I'm looking for is --
17 and have there been communications with most of the folks
18 that are in this potential 10 to 12 list to have a sense that
19 the outside time within which you think you would be,
20 assuming you could get them lined up and get all the parties
21 on board for it -- I mean, would the end of September be
22 possible or is October -- I know you'd want a little cushion,
23 obviously, but --

24 MR. ENGEL: We have not had conversations yet with all
25 of the parties. We have had conversations with most of the

1 third parties. But it will be, particularly in light of July
2 and August being typical vacation months, it will be a mad
3 dash, frankly, to schedule what we need to schedule.

4 THE COURT: All right, let me hear from the defendants.
5 I think at two levels I'd like to hear from the defendants,
6 one in terms of your response to the depositions that have
7 been outlined that the plaintiff wishes to take. And let me
8 say I'm happy to hear from you on this but I think I
9 appreciate the positions everyone has about your contention
10 that there was an investigation begun before the suit was
11 filed and the government's had, or the Bureau or agencies
12 have had an opportunity for further discovery, and I'm happy
13 to hear from you on that.

14 I'm going to allow some depositions, and I don't think
15 that will surprise anyone, but I want to make it reasonable
16 and I want to make it as expedited as we can to move us
17 forward.

18 So what I'm even more interested in is your views about
19 the depositions that the plaintiff is suggesting they wish to
20 take. And then I would like to hear from you about your
21 feeling that your requests have not been met in terms of
22 discovery, if there are outstanding matters. And finally,
23 what other discovery you anticipate from your side that you
24 can at least foresee at this time.

25 I don't know who wants to go first.

1 MR. BALDRIDGE: Your Honor, if I may, Doug Baldridge for
2 Global Payments, trying to address the three issues you did
3 in that order.

4 As to each specific deposition identified by counsel,
5 I'm not entirely sure whether these are needed or not needed.
6 And I really, on behalf of Global Payments, don't have a
7 dispute as to that, nor do we have a dispute with a
8 four-month extension, which is what the Bureau has requested.

9 What we do have, however, is this, what I consider a
10 highly practical problem. And the practical problem is that
11 if we aren't granted -- excuse me, if we don't receive the
12 information we've asked for, we're going to be back here
13 again in four months with the burden on my client to seek a
14 further extension, and that's something nobody wants.

15 Our view of the issue is that, you know, the government
16 here, at least as to Global Payments, has asserted what I
17 would call a novel theory. And in my view and my client's
18 view, they have a heightened duty to know what they're saying
19 before they assert that novel theory. And they've had the
20 means, through a two-year investigation, through two
21 investigatory hearings, and, as counsel mentioned, the
22 expedited discovery they took with the TRO to get, for lack
23 of a better word, their stuff together, and know what their
24 case is against Global Payments, which, incidentally, is a
25 victim of the debt collectors' practices, in our view, and

1 not a primary actor.

2 Now, how does that pan out in moving into your other
3 issues?

4 There are three major things that I think there really
5 shouldn't be much dispute about that we have hanging in the
6 balance before we can understand the extent of the discovery
7 we need and before we can get ready for, you know, a rather
8 quickly approaching discovery deadline.

9 And the first thing is take a look at the privilege log
10 we filed that the CFPB has used. It doesn't meet any
11 standard. I don't think that there's a whole lot that needs
12 to be said that a bulk log of documents, it's insufficient
13 under any ruling, whether it be your ruling in *Tanner versus*
14 *Gorilla* or anything else, it is a 26(b)(5)(A) privilege log
15 that doesn't identify a document. It has only six entries.
16 There is no basis whatsoever for us to ascertain whether we
17 have any dispute whatsoever as to these documents, or even
18 need these documents, because there's no identification of
19 the common categories of information that every single civil
20 litigant has to put in a privilege log.

21 The CFPB cites an inapplicable advisory committee note
22 from Rule 34 and the privilege log issues are governed by
23 Rule 26, as you know. We need to get a real privilege log.
24 That's number one.

25 Number two, we've asked for, among other things, the

1 investigatory file or investigator file of the CFPB. They've
2 asserted a number of categories of typical governmental
3 privileges without identifying any specificity but just
4 simply saying deliberate privilege or investigatory privilege
5 and so on and so forth. And then they bootstrap that or
6 attach through a Rule 33(b) response without any specificity,
7 that says basically you've got some documents, go find it.
8 It's not even a close call, what 33(b) requires. It requires
9 you specific -- specify by category and location the
10 documents that answer the interrogatories under 33(b). It is
11 undisputed they have not done that. We need to do that
12 before we can figure out the extent to which we need further
13 discovery and what we need.

14 We also need the investigatory file. I haven't dealt
15 with the CFPB in the past, quite frankly, in litigation, but
16 I do know from the FTC cases, you get that file. There may
17 be redactions, there may be certain things withheld, but you
18 don't -- you're not deprived of the factual information that
19 the government has allegedly put together to assert a claim
20 against your client. We don't have that.

21 Now, getting to the interrogatories more generally,
22 there are contention interrogatories in this case. The
23 government has simply said, well, we're not going to give you
24 any information there because it's premature.

25 Well, if there's additional information that's going to

1 be discovered through this additional discovery that the
2 Court is going to allow, they can supplement their answers.
3 But right now, after the investigation, the two investigatory
4 hearings, the preliminary depositions, and the TRO, there has
5 to be some information they can provide to give us the
6 factual bases for their contentions in this case. They're
7 wholesale refusing to provide that on the basis it's
8 premature. I don't think that's a close call, either, and we
9 need that information.

10 So that's where we are in this. Again, four months is
11 fine with us, but we are going to be back to you with the
12 burden on my client, unfairly, asking for additional time if
13 the government doesn't get moving on these things, which, in
14 my view, they have a heightened duty to get moving on given
15 the allegations they made.

16 So that's generally our position and we're hoping we can
17 break the logjam today.

18 MR. GLEASON: Your Honor, Global Payments has addressed
19 the third point that you asked the defendants to address; I'd
20 like to address the first.

21 THE COURT: Okay.

22 MR. GLEASON: For those on the phone, this is Joe
23 Gleason for Frontline Processing.

24 With respect to CFPB's request for these additional
25 depositions, I think you've indicated that you're going to

1 allow them to conduct some of these depositions.

2 What I would ask the Court to consider is limiting the
3 scope of any extended discovery to the discovery that the
4 CFPB has identified here today. And specifically in their
5 letter they identify deposition discovery that they would
6 like to conduct against four party defendants, and they
7 identify 30(b)(6) deposition discovery that they would like
8 to conduct against, I believe, six nonparty defendants.

9 Frontline Processing is not on that list and the CFPB
10 has indicated that they are done with deposition and
11 interrogatories -- interrogatory and document discovery. So
12 it would seem anyone who is not on this list can have
13 discovery closed against them. And if the -- obviously, if
14 the Court and the parties want to agree to extend discovery
15 against the parties for whom we have identified additional
16 discovery that needs to be conducted, I don't think there's
17 any reason for the defendants against whom additional
18 discovery is not sought to be included in this discovery
19 extension.

20 The other thing that I would raise, though, is I don't
21 think we have any of these nonparties on the phone today, and
22 I don't know whether the nonparties have been notified that
23 discovery in the case is closed and that effectively these
24 30(b)(6) depositions that the CFPB is negotiating with them,
25 they really don't have the authority to conduct those

1 depositions at this point.

2 So I would suggest that if the Court does extend the
3 scope of -- extend the time for discovery, limit the scope,
4 and, frankly, that before it extend the scope of discovery to
5 include nonparties that it obligate -- that it oblige the
6 CFPB to reach out to these nonparties and ascertain their
7 positions.

8 THE COURT: Are you suggesting to give them a say on
9 whether we extend discovery in the case?

10 MR. GLEASON: I'm suggesting that any discovery
11 extension be limited in scope, and before you broaden the
12 scope to include this third-party discovery we should seek
13 the opinions of these third parties as to whether the
14 extension should be granted as to them.

15 THE COURT: Let me say on that, I probably would not do
16 that. It would be unlikely that I would let nonparties
17 engage in telling us how we should try your case. And I
18 understand and appreciate they may have reasons not to wish
19 to be deposed or have to submit to discovery, which I would
20 let them submit and I would consider on the merits outside a
21 timing issue, only because I think you folks and I should
22 control the timing of the litigation. So I probably would
23 not be inclined to open the door for that.

24 Certainly if I allow the extended discovery, the third
25 parties would reserve all rights that they would have to

1 raise objections to any matters. But, and this is just
2 reacting, I would not typically be inclined to -- well,
3 except to the extent that, obviously, and I think Mr. Engel
4 has acknowledged this, he can't do that until I do extend and
5 that's why he's not noticed them.

6 So I think from the plaintiff's perspective I've heard
7 an acknowledgement that they're awaiting authorization from
8 me to be able to do that through an extension. So once I
9 decided after hearing from the parties to grant an extension,
10 then, from my perspective, that part would be resolved and
11 then the parties could raise any other objections they
12 wanted. But I appreciate, I understand, I think, fully your
13 other contentions there.

14 MR. GLEASON: Thank you, Your Honor.

15 THE COURT: Okay.

16 MR. GLEASON: The other issue that I wanted to address,
17 you asked how long should the extension be.

18 THE COURT: Right.

19 MR. GLEASON: The depositions that have been discussed
20 so far where Global Payments has indicated that their
21 witnesses won't be available until September, those are not
22 depositions that have been noticed by the CFPB; those are
23 depositions that have been noticed by Pathfinder. And so I
24 don't think that is part of the CFPB's request.

25 And, frankly, Frontline would, if we're going -- would

1 appreciate, if we're going to extend discovery, that we not
2 extend it by 50 percent of the discovery period that has
3 already been had, but rather that we extend it by some
4 shorter period so that we can get to summary judgment.

5 THE COURT: Let me just put this out there, and I'll let
6 everyone react to it but I'll let you go first because we're
7 talking about this.

8 When we extend discovery, and especially in instances
9 where we extend the discovery with a limited scope, as is
10 being suggested here, that can sometimes have unintended
11 consequences because, as was suggested by Mr. Engel when he
12 was talking about the things that they're just now getting
13 and need to review and what doors that may open, typically in
14 this instance we would be extending the discovery so they
15 could accomplish these matters that have been outlined.
16 Well, typically the defendants don't want the door closed to
17 them should things arise in this that cause them to need
18 additional information and would rather not have to revisit
19 the Court, and I would rather you not have to revisit me if
20 such things arise.

21 So in fashioning the order it becomes a little delicate
22 in terms of how do we state the scope so as to not unfairly
23 prejudice a party who may very legitimately have additional
24 needs that are unknown today. Because I'm assuming
25 everyone's going to attend all the depositions, you go to the

1 deposition and all of a sudden you learn something new that
2 you need to follow up on, and if I said discovery is closed
3 but for ten depositions, then we're back up here again and
4 you're justifying that.

5 And I realize if it's an obvious thing, hopefully you
6 all could agree to that and submit a consent order to me,
7 which I would sign.

8 But I just say that to say that while I certainly want
9 to be -- to confine this to the necessities, at the same time
10 it's sometimes helpful to at least allow some flexibility
11 that allows the parties to meet the needs as they arise. And
12 it may be that that can be just done, to provide that the
13 parties have the authority to consent or to submit consent
14 requests for adjustments as may be required based on the
15 information that you receive. I just put that out there as a
16 matter that you might want to think about.

17 All right, who's next?

18 MS. BURCH: I'll go next. Tippy Burch for Defendant
19 Varinderjit Bagga.

20 Ms. Bagga objects to the extension of any discovery. I
21 acknowledge that we're not likely to be successful on that
22 point, but we objected to the eight-month period in the first
23 place. Her deposition was taken during expedited discovery
24 and she is very much in a position where she is ready to get
25 to summary judgment as quickly as possible and put this

1 behind her as quickly as possible.

2 As Mr. Engel mentioned, they have reached out to us and
3 we did get Ms. Bagga on the phone, I think within days of the
4 request, and, you know, believe that there are no outstanding
5 discovery requests of Ms. Bagga, none have been sent during
6 the discovery period.

7 So, quite frankly, you know, I think, given the position
8 that she's in, she is ready for this to just be cut off. And
9 as we've all acknowledged, we don't know what's going to come
10 up in these depositions and that's why we take the position
11 that we're ready for discovery to be over altogether.

12 I understand why Mr. Engel has not sent the deposition
13 notices, given that the depositions are likely to occur
14 outside of the allowed discovery period, but I don't know if
15 any of those topics will include my client. So it makes it
16 difficult for me to be agreeable to any extension where I
17 don't know whether or not -- you know, I appreciate that he
18 does not plan to take the deposition of my client, but I
19 don't think that that necessarily relieves me or my client
20 from having to worry about these that are on the list.

21 THE COURT: And let me say, I think your position has
22 been consistent from the beginning as you stated, and I do
23 appreciate and understand, quite honestly, your position.
24 And it is your position that's one of the factors that caused
25 me early on to say we need to bring this to some degree of

1 closure.

2 Let me add this. It's probably premature now,
3 especially since there is the possibility of additional
4 discovery and not knowing the scope of that until you see the
5 30(b)(6) notices, but certainly you're not required to wait
6 till the close of discovery to file a motion for summary
7 judgment.

8 Again, I'm not suggesting that you do that now, but
9 certainly while these other folks may be squabbling some
10 more, there may be an earlier time that Ms. Bagga could have
11 her issues put before the Court. But I just make that point.
12 All right.

13 MS. JOSEPH: Your Honor, this is Linda Joseph.

14 Obviously, you know, we have a really serious problem
15 with regard to funding. You know, I'm considerably in
16 arrears on being paid and it's a big problem.

17 On the other hand, you know, in listening to this this
18 morning and your comment, Your Honor, about the need for
19 flexibility, I was somewhat upset to hear that, you know,
20 there were interviews being conducted, for example, of
21 Ms. Bagga over the phone without the other parties involved.
22 That really creates kind of, it seems to me, an unfairness,
23 that we're hearing that Ms. Bagga is going to file a motion
24 for summary judgment.

25 You know, I guess I'm a little bit troubled by that and

1 I think that that sort of thing should be taken into account
2 too in making whatever decision Your Honor feels should be
3 made here.

4 Obviously, all this discovery with respect to the
5 corporate defendants is really, you know, kind of, I won't
6 say irrelevant to my client, but it seems to be raising
7 issues that are far removed, from my perspective, the Fair
8 Debt Collection Act and the Consumer Financial Protection
9 Act.

10 So those are just my thoughts on it to share with you.

11 THE COURT: Okay, thank you.

12 MR. BALDRIDGE: Your Honor, Doug Baldridge, Global. Is
13 it my turn?

14 THE COURT: Yes, sir.

15 MR. BALDRIDGE: I really very much agree with
16 Mr. Gleason's sentiment, I'll say, but I don't know how
17 practical it is because I think there needs to be some
18 flexibility, perhaps some kind of mechanism within the order
19 where parties can seek additional follow-up discovery,
20 depending on what is learned.

21 However, I do want to make it clear that my client is
22 going to need to take a 30(b)(6) equivalent-type deposition
23 of the CFPB itself and cannot do that until we get this other
24 information. So I want to put a marker down for that as
25 well. But I think we can limit the scope but we have to have

1 a mechanism or an escape hatch, given that I don't have
2 enough information now to even complete a discovery plan.

3 THE COURT: All right.

4 MR. ENGEL: Can I address the Global's request for
5 additional information?

6 THE COURT: Hold on just a second.

7 Mr. Elbein, did you want to be heard?

8 MR. ELBEIN: Your Honor, I think our letter and the
9 arguments of counsel have well represented what we wanted to
10 say. I just wanted to make a couple of points.

11 One is that we are, my client is distressed by the
12 inaccuracies in the CFPB's letter.

13 We did not know until this moment that there were
14 interviews taking place of parties under the table without
15 our knowledge; we have no idea what the content is. I'm
16 frankly -- well, it is beyond my experience in all my
17 experience in practicing law. And I hope that will be
18 addressed in some manner; I'll talk to counsel about it.

19 In answer to your question about what discovery we need,
20 to express it in general terms, Global Connect is not a debt
21 collector, we're not a payment processor. We're unlike every
22 other defendant in the case. All we did is provide a service
23 that was completely message neutral.

24 And we want to know in general terms from the CFPB why,
25 how you assert that your CID provides notice to my client

1 that there was something foul going on.

2 So we need a CID of -- excuse me, we need a 30(b)(6) of
3 the CFPB to determine what their theory is. It doesn't make
4 sense to us. And, of course, that will have to wait until
5 all of this discovery is done.

6 We're sitting back watching discovery and letters and
7 conversations, wondering when something will come up that
8 relates to us. So far nothing has. So we'll need a 30(b)(6)
9 of the CFPB.

10 MS. JONES: Your Honor, this is Kristina Jones for
11 Defendant Pathfinder.

12 We share the concerns the defendants have said, other
13 defendants have said about the CFPB conducting interviews.
14 And I believe we will also want a 30(b)(6) deposition of the
15 CFPB.

16 We currently have discovery requests outstanding and are
17 beginning the meet and confer process. We have previously
18 indicated, I think in the submission that the CFPB made to
19 extend the discovery deadline, we do not object to the
20 four-month extension. And I think that, while I understand
21 the proposal Frontline has made, I'm not sure that that is
22 actually workable in practice.

23 THE COURT: Thank you.

24 I'm going to let plaintiff respond to these points in
25 just a moment.

1 But I've noted the reaction to the phone conversation
2 with Ms. Bagga, and I guess I'm bothered that it didn't
3 strike me the way it struck everyone else and so maybe I've
4 missed something. I mean, an attorney can interview
5 witnesses. This was not a deposition, this isn't testimony
6 that's been, as far as I know -- or is it? I thought you
7 just called and talked to her on the phone.

8 MR. ENGEL: We just called and talked to her on phone.

9 THE COURT: I think a lawyer can talk to witnesses even
10 if they're parties and not necessarily include everyone in
11 it.

12 But, now, I've been a judge for so long, not a lawyer,
13 so maybe I'm slipping on my code of professional conduct and
14 someone can educate me. But I just say that because there
15 was a level of outrage there that was a little surprising to
16 me, and if we're getting off the tracks ethically or
17 professionally in this thing, I definitely want to bring us
18 back in. But it didn't strike me as that because, as I said,
19 I think that lawyers routinely go out and interview witnesses
20 and don't share it with the other side, and even witnesses
21 who are parties, and don't share it with the other parties.

22 While that may arise in discovery in terms of
23 information you have that ultimately has to be produced in
24 response to a discovery request, I can see that arising and
25 that certainly one is not permitted to hide the ball. And if

1 that's what the concern was, I don't mean to suggest that
2 people are permitted to hide the ball, but just the fact of
3 having a conversation does not strike me as inappropriate,
4 but I may have missed something.

5 MS. JOSEPH: Your Honor, this is Linda Joseph.

6 You know, I guess what surprised me about it was it
7 sounded as though the CFPB was saying that that was a
8 substitute for what would have otherwise been a deposition
9 and that's what bothered me about it. And I understand that
10 people do interviews and such, but if it's meant to be a
11 substitute for a deposition, I guess that's what kind of
12 surprised me, was it was being characterized as saving time
13 by substituting this for a deposition.

14 THE COURT: I took it as we didn't have to take a
15 deposition because we took this and figured out that we would
16 have been wasting time to take a dep, but that they're going
17 to investigate other things and we may see something more as
18 a result of it. I don't need to speak for you but --

19 MR. ENGEL: No, I think that's right, Your Honor. But
20 I'd also note that we are not uniquely allowed to notice
21 someone's deposition. Ms. Joseph could certainly take
22 Ms. Bagga's deposition if she thought that was appropriate.

23 We were certainly trying to be efficient. There's
24 nothing on the record, and to the extent we discovered
25 substance that is responsive to discovery requests, we'll, of

1 course, provide that information.

2 MR. GLEASON: I'm sorry, Your Honor.

3 MR. BALDRIDGE: Your Honor, this is --

4 THE COURT: Just a moment.

5 Go ahead.

6 MR. GLEASON: Your Honor, part of the problem is -- part
7 of the problem goes back to what Mr. Baldridge was saying on
8 behalf of Global Payments, which is that the CFPB has not
9 been providing their contentions, they've not been providing
10 the substance. And the discovery responses that we have now
11 are the same discovery responses we've had for months and
12 months and months. Those haven't been updated, they haven't
13 been changed, so that's why we're not learning about them.

14 THE COURT: And that's where I was moving. I want to
15 work down the list of the concerns that have been raised by
16 various counsel for defendants and just work down the list
17 and take them up. I wrote them in an order and it would be
18 easier for me to take my notes as we go.

19 The first one was the privilege log, and certainly I
20 will confess to you I did not review the privilege log before
21 today's hearing but I did read what was commented about it,
22 and I do think the rule is pretty specific in terms of what
23 needs to be disclosed. There has to be specific information
24 for the opposing party to know if they should be challenging
25 the privilege or not, and so let me get you to respond to

1 that.

2 MR. ENGEL: Sure. I would encourage you to look at the
3 log, Your Honor. And I suggest that we have, although we
4 have not itemized each communication, for example, we have
5 sufficiently described it in the log, to the extent that
6 Global Payments would be able to determine the validity of
7 that claim.

8 For example, we've listed, I think, six categories of
9 information here. And we've provided, to the extent we've
10 claimed law enforcement and deliberative process privilege,
11 we've also provided a declaration from Bureau of Management
12 that they have reviewed these documents and claimed the
13 privilege, as it requires.

14 But, for example, category one, where we've asserted law
15 enforcement, attorney work product and deliberative process
16 privilege, we've described opening memos, investigative
17 plans, internal memos, and work product and internal
18 communications regarding the same.

19 Regardless of when those -- who were the parties to
20 those and when they were written, those are privileged. And
21 we suggest that the same applies to, for example, category
22 two, where we've claimed privilege to civil investigative
23 demands and related communications.

24 We take the position that those documents are
25 categorically privileged, regardless of when they were

1 written. And that is a point of disagreement, I think,
2 between Global Payments and the Bureau.

3 And I will say this, Your Honor, that to the extent the
4 Court is inclined to require a line-by-line itemized
5 privilege log, that would impose a great burden on the Bureau
6 that we think is not commensurate with the value it would
7 provide to Global Payments to enable them to assess the
8 privilege, and we would like the chance to fully brief that
9 if the Court is entertaining that possibility.

10 THE COURT: It seems to me the privilege that you're
11 asserting as to these in terms of the investigative file is
12 one that is the second or third thing I had on my list that
13 had been raised by Mr. -- by someone, but one of the
14 attorneys raised the concern about the privilege based on
15 investigative file and the concern that either it's being
16 read too broadly or that there's not an understanding of
17 exactly what the scope of that is.

18 And so it may well be that that is enough to alert us
19 that's the issue and the Court needs to resolve what is the
20 breadth and applicability of that privilege.

21 MR. ENGEL: Sure. And let me address the investigative
22 file question.

23 They have everything in the investigative file that is
24 not a communication between an investigator that is either
25 work product or law enforcement privileged, or a

1 communication between an attorney and an investigator. But
2 as to the substance, all the documents we received in
3 response to civil investigative demands, that has all been
4 produced. We are not withholding the substance of the
5 investigative file.

6 THE COURT: Okay.

7 MR. ENGEL: What we are withholding is our analysis of
8 that file.

9 THE COURT: What about the contention interrogatories?

10 MR. ENGEL: Again, Your Honor, I'd ask that you review
11 the interrogatories, because to suggest that we have
12 wholesale objected to responding is completely inaccurate.
13 These, I think, six interrogatory answers that Global
14 Payments identifies as being insufficient, we rest on those
15 answers. We think that at this point in time, without having
16 yet taken Global Payments' depositions, these are our
17 contentions and we have set those forth, notwithstanding our
18 objection that they are premature.

19 We have answered those interrogatories. They may not
20 like the answer, they may want more, but we believe that we
21 have satisfied our obligations in that regard.

22 THE COURT: Let me say that, without going into the
23 specifics of each of them, I do think that the point is well
24 taken that a premature objection is not necessarily a good
25 objection because I think what is required is what you know

1 now and what you have now, and certainly you are not boxed in
2 by that because you have the right to supplement as you
3 proceed with discovery and discover additional information
4 that would supplement those contentions or those responses.

5 But I think at this point I will simply say, and I'm not
6 saying you haven't done it, I'm just saying I think the
7 obligation is to disclose what you have now and not -- and
8 reserving, obviously, the right to supplement as additional
9 information comes in. But I think by saying it's premature
10 suggests we know things and we're not telling you now because
11 we don't know everything yet.

12 MR. ENGEL: I think when Your Honor has the opportunity
13 to review the answers you'll find that that is how -- we
14 objected that they were premature, but notwithstanding that
15 objection we answered our contentions, we provided our
16 contentions based on the information we had at that point in
17 time.

18 THE COURT: There was also the suggestion, and this goes
19 to some extent to the issue of contention, contention
20 interrogatories, but the possibility, obviously, that one or
21 more of the defendants will anticipate a 30(b)(6) of the
22 plaintiff where those contentions would be further explored
23 as this develops.

24 So I think, going back to the point we were discussing
25 about the scope of the discovery, it seems obvious to me that

1 one or more of the defendants anticipate discovery from their
2 end in terms of at least a 30(b)(6) of the plaintiff to lock
3 down the contentions and positions that the Bureau is taking
4 as to each of them.

5 MR. ENGEL: I suggest -- and we'll address those notices
6 on the merits when they arise. But if -- we have to complete
7 discovery to fully state our contentions.

8 THE COURT: Well, I think that was Mr. Baldrige's -- I
9 think that's the position he took, he needs to know exactly
10 where you are, which you are not going to know until you
11 finish your discovery, which means that 30(b)(6) is probably
12 the last thing that happens in discovery, is my guess.

13 MR. ENGEL: I think that's right, and I can't fathom
14 accomplishing that within four months, frankly.

15 THE COURT: Any other points you want to make?

16 MR. ENGEL: On the question of our use of Rule 33(b) to
17 designate documents, I do think that we have sufficiently
18 specified documents by title, for example. We haven't said,
19 as counsel suggests, there are a bunch of documents, you find
20 the answer. They may want more specificity but we do believe
21 we have satisfied our obligation to answer pursuant to that
22 rule by identifying documents and that the burden for Global
23 Payments identifying the answer is equal as it would be upon
24 the Bureau.

25 THE COURT: Are those documents produced in some type of

1 searchable format?

2 MR. ENGEL: They are, yes.

3 THE COURT: Are the kinds of representations you're
4 making as to the documents, I mean is it the kind of thing
5 that would allow you to search and find those documents? I
6 mean, those are fairly broad terms and I can imagine that
7 would involve a lot of documents. Is there --

8 MR. ENGEL: I believe that is true, Your Honor. And
9 I'll further note that most of these documents are Global
10 Payments own documents, not all of them, but a lot of them
11 are.

12 THE COURT: Yes?

13 MR. GLEASON: Your Honor, I think that the suggestion
14 that they have sufficiently identified documents under Rule
15 33(d) is grossly misleading. And if you -- the very first
16 interrogatory that Global Payments has identified, their
17 interrogatory number 4, they're seeking essentially the
18 complete factual basis for the CFPB's contention that Global
19 knew or should have known the debt collectors were engaged in
20 unlawful conduct.

21 In response to that interrogatory, instead of an
22 explanation of what facts arose or what omissions or --

23 (Music playing.)

24 THE COURT: Hold on a second.

25 (Pause.)

1 THE COURT: Okay.

2 MR. GLEASON: Instead of an answer to the question, what
3 we get is a long list of categories of documents that are
4 extraordinarily broad, including things like card network
5 policies, procedures, rules, and agreements.

6 What does that mean in the context of the interrogatory?
7 You know, Global Payments' own policies, procedures, rules,
8 and agreement. Again, what could that possibly mean in the
9 context of this interrogatory?

10 Now, obviously, I represent Frontline, not Global
11 Payments, but Frontline has exactly the same issue because
12 we're getting exactly the same answers to these kinds of
13 interrogatories. And, in fact, Global's interrogatory
14 number 5 asks for the CFPB's complete factual basis for what,
15 if anything, Pathfinder and Global Payments did wrong.

16 So Frontline for that reason has an interest in getting
17 a real answer to that question rather than a long list of
18 broad categories of documents that -- I mean, when you
19 identify the card association network rules, operating
20 agreements, that's thousands and thousands of pages of
21 documents. It's impossible, even if they are Global's own
22 documents, for any party to sift through that and ascertain
23 what is the CFPB's contention that actually answers the
24 interrogatory.

25 MR. ENGEL: To the extent that argument applies to

1 Frontline, this is the first time that Frontline has raised
2 any dispute with respect to our answers to interrogatories.

3 We have just completed taking depositions of Frontline
4 and just received those transcripts and I expect that based
5 on our review it's going to be time for us to supplement
6 those answers with our contentions to the extent they've
7 evolved based on that testimony.

8 But like I said, this was the first time that Frontline
9 has raised this issue and we'll certainly address it.

10 THE COURT: But I have to say that based on the response
11 that he read then, I think the defendants are entitled to
12 some degree of specificity to know what it is they're facing
13 here. And to be this far into the litigation, the Bureau has
14 to have some sense of the nature of the violations that were
15 occurring here.

16 MR. ENGEL: I completely agree, Your Honor, and I'll
17 highlight another answer to an interrogatory.

18 THE COURT: Okay.

19 MR. ENGEL: Where, for example, Global has complained
20 about our answer to interrogatory 6, which asks to list all
21 indicators that the collectors were committing fraud.

22 We answered with reliance on 33(d), and then enumerated,
23 let's say three pages of detail specifying the indicators of
24 fraud. And we think that that answer is sufficient.

25 THE COURT: Will you just read me an example of a

1 specific indicator just so we've got it on the record.

2 MR. ENGEL: Yes. The first paragraph, so I say: More
3 specifically, but without limitation, the Bureau answers that
4 Global Payments knew or recklessly disregarded the following
5 indicators that Universal Debt & Payment Solutions and Credit
6 Power were committing fraud. Global Payments knew or
7 recklessly disregarded that Universal Debt & Payment
8 Solutions and Credit Power were prohibited high-risk
9 merchants. Global Payments knew or recklessly disregarded
10 that Universal Debt & Payment Solutions' name included terms
11 that Global Payments' policy recognized as indicators of
12 prohibited factoring or aggregating. Global Payments knew or
13 recklessly disregarded that a Credit Power officer had
14 recently finished a sentence for drug trafficking and shared
15 an address with Mohan Bagga.

16 THE COURT: Defendants --

17 MR. BALDRIDGE: Your Honor?

18 THE COURT: Yes.

19 MR. BALDRIDGE: When you're ready I'd like to be heard
20 again if I may.

21 THE COURT: I'm ready. Is this Mr. Baldridge or is
22 this --

23 MR. BALDRIDGE: Yes, it is, sir.

24 THE COURT: Okay.

25 MR. BALDRIDGE: These issues are intertwined, and one

1 reason is that the specificity that's required has not been
2 provided, in part because of the assertion of these
3 privileges in a nonspecific manner without the government
4 having even met its burden. So I want to start with the
5 privilege log itself.

6 Mr. Engel encouraged you to look at it. Boy, do I
7 encourage you to look at it. It wouldn't take very long
8 because it's about a page and a half or two pages -- I don't
9 have it in front of me -- and I don't think anything more
10 need be said than there is no civil litigant that you would
11 allow to submit a privilege log of this type. And the
12 government plays -- has to play by the same rules as any
13 other civil litigant.

14 What Mr. Engel said to you about that privilege log is
15 take my word for it, Judge, we gave him the stuff that's not
16 this or not that.

17 Well, you know what? He doesn't have the right to do
18 that. He has to give us enough information to challenge a
19 document on a document-by-document basis based on sender,
20 recipient, general description, just like any other Rule 26
21 privilege log.

22 It cannot be disputed that that has been done, it hasn't
23 been done, and we don't have to take the government's word
24 for it on this. They need to present a privilege log like
25 every other civil litigant and allow us to challenge these

1 things. And once these things come out, if they do, that is
2 necessarily going to impact the interrogatory answers.

3 Now moving to the 33(b) part of the interrogatory
4 answers. The law says you must specify by category and
5 location where the documents are that are specifically
6 responsive to the interrogatory answer.

7 You have yet to hear any answer that does that because
8 they have not done that. They have not provided a basic
9 33(b) response that you would require every other civil
10 litigant to provide. And, again, we don't have to take their
11 word for it.

12 Now, contention interrogatories, you're absolutely
13 right, we're at least entitled to all of what they know now,
14 actually. That would include what they now claim to be
15 privileged if they don't successfully assert that privilege.

16 And, you know, I'm beside myself because they've been in
17 this for two years, and that's the best they can do is what
18 these answers are? Look at them. If that's all that
19 supports their contentions we shouldn't be here. And they
20 need to let us know what the facts are they rely on fully
21 before we get into further discovery or we're going to be
22 asking for four more months at the end of this four months.

23 Going to the specific privileges they assert. Law
24 enforcement privilege, they assert it very generically, very
25 generally. Now, that requires the government to demonstrate

1 the disclosure of the information, such as law enforcement
2 techniques and protocols, would jeopardize future
3 investigations. That's the law. They haven't even tried to
4 do that.

5 Going to deliberate process privilege, they have to
6 establish that it's predecisional. It's very clear that all
7 documents that relate to a decision aren't privileged simply
8 because they were created. There has to be enough
9 information to determine the timing and the general contents.

10 For example, are they advisory opinions,
11 recommendations, deliberations that involve government
12 policy? They haven't done that at all so we can't challenge
13 it.

14 Common interest privilege is another one they've
15 asserted. You don't get a privilege because you have a
16 common interest. The common interest privilege gives you a
17 privilege over information that is otherwise privileged
18 without constituting a waiver that more than one party has
19 shared it. It just simply is unsupported on this record.

20 So what I want to encourage you to do is just what
21 Mr. Engel did, look at the information. It speaks for
22 itself. The government has to comply with the rules just
23 like anyone else; they haven't done so. And we're shooting
24 in the dark trying to deal with this novel theory they've
25 come up with to extend liability beyond the principal

1 wrongdoers, in our case we believe the only wrongdoers, if
2 there are wrongdoers at all, and we're supposed to guess over
3 the next four months where their case is.

4 And then we're going to show up with you in October, on
5 October 7th, and they want to say, Judge, well, they finally
6 let something out of the bag but they're still holding this
7 back on an unestablished privilege and we need four more
8 months. Thanks.

9 THE COURT: Thank you. Anyone else?

10 MS. JONES: Your Honor, Kristina Jones for Pathfinder.

11 I think we share a lot of the concerns that have been
12 expressed by the other defendants with regard to deficiencies
13 in the CFPB discovery responses.

14 But one thing I did want to note with regard to the
15 interviews that the CFPB has done, conducting. I think the
16 problem is not that it necessarily violates the ethics rule;
17 it's that a party is taking a deposition in the case. That
18 deposition has to be noticed, all the parties get notice of
19 that deposition. What's happening here is CFPB has
20 represented that these are the (inaudible) people (inaudible)
21 deposition for efficiency purposes without providing notice
22 to the other party.

23 THE COURT: Thank you. Anyone else? Yes?

24 MR. GLEASON: Your Honor, this is Joe Gleason again for
25 Frontline Processing.

1 And I just wanted to address a point that Mr. Engel
2 raised where he was reading some more specific allegations
3 that are written in responses to different interrogatories.

4 First, I would say that that doesn't obligate -- that
5 doesn't obviate the requirement the CFPB provide complete
6 answers to all of the interrogatories.

7 But the other thing I would say is even these, you know,
8 what appear to be more complete responses are still pretty
9 vague.

10 For instance, you have identifications of, you know,
11 Credit Power's principal was an ex-felon. Well, throughout
12 Credit Power's existence there were several principals. Who
13 are we talking about here? You know, we have an
14 identification of, oh, there were these chargeback documents
15 that suggested these problems.

16 Well, which chargeback documents are we talking about?
17 We should be able to identify those by Bates number by now
18 and we're not. We're still, even in these more detailed
19 responses, there's still a level of detail that exists and
20 has not yet been provided.

21 THE COURT: Very well.

22 MR. GLEASON: Thank you.

23 THE COURT: All right, I will take a close look at the
24 responses that you -- and you've provided those to me in your
25 letters, I know several of those are incorporated in those

1 and I will take a look at those.

2 The manner in which I handle discovery disputes such as
3 this is what we're doing here, which means you've not filed
4 motions or briefs so there's not a motion to compel, and so
5 the process that I use is, having had this meeting, I will
6 issue an order based upon the hearing and the letters that
7 were submitted by the parties. I typically then actually
8 file those letters as a part of the record so that it's clear
9 what was presented to me when I made the decision and there's
10 a complete record.

11 What I typically do then in that order is say, I may
12 impose requirements on parties, and will then say if a party
13 fails, now that the Court has directed in this manner, the
14 other parties are authorized to file a motion to compel,
15 which means you then don't have to jump through the hoop of
16 coming and meeting with me. You still have to confer in good
17 faith, obviously, before filing any motion to compel. But I
18 may set out requirements that I would expect to be met and I
19 will not impose sanctions because this is not a formal motion
20 to compel but it's an opportunity to get things squared up
21 and heading in the right direction.

22 I will issue that order and then the guidelines are set
23 and if someone fails to comply with that on either side, then
24 that party can file a motion to compel, we'll brief it, and
25 we'll do it in the normal course of how we do these things.

1 I am going to extend the discovery. At this point I'm
2 going to extend it for four months, hoping that we can push
3 things as quickly as possible.

4 And I realize, Mr. Baldridge, your concern about that
5 30(b)(6), and Mr. Engel's concern of whether the 30(b)(6) of
6 plaintiff can be accomplished in that time; hopefully it can.
7 If it cannot, certainly I will give the same consideration to
8 the defendants that I've given to the plaintiff in being able
9 to accomplish what you want while being mindful at all times
10 that at least, I think for all the parties, being expeditious
11 is important, but particularly for some of the individual
12 defendants, that is the primary concern at this point, so
13 trying to move it to the point that those parties, if they
14 want to tee up some issues they'd be able to, and we could
15 move the case forward.

16 MR. ENGEL: Your Honor, with respect to the privilege
17 log issue, the Bureau has not had the opportunity to address
18 that legal issue in writing pursuant to the Court's typical
19 process. I wonder if we might have the opportunity, a brief
20 window to present in writing our argument with respect to the
21 adequacy of the privilege log.

22 THE COURT: You may if you'll do it by next Friday.

23 MR. ENGEL: Yes, sir.

24 MR. BALDRIDGE: And, Your Honor, we would, of course,
25 want to prepare a quick reply.

1 THE COURT: You may. I won't rule before the end of --
2 two weeks from now.

3 MR. BALDRIDGE: Thank you.

4 MR. ENGEL: Thank you, Your Honor.

5 THE COURT: Anything else?

6 MR. GLEASON: Your Honor, will there be any limit on the
7 scope of the discovery in the extended period?

8 THE COURT: That will be in my order.

9 MR. GLEASON: Thank you.

10 THE COURT: But I will tell you now I intend to make it
11 be the scope of what we've described here today. What I will
12 make it is the scope will be what has been described here
13 today and discovery that is necessarily required by that.
14 That's the door I'll leave open for you and hope that you
15 guys can work that out on that point. But if you can't, then
16 you can come back to me. And those are the kind of things
17 we'll still do by phone conference. You don't need to file a
18 motion to do that. If there's a disagreement about whether
19 someone should be permitted to do something additionally,
20 then call Mr. Goss, let's set up a phone conference about it.

21 Let me say in advance, as I said to Mr. Baldridge when
22 he raised the issue about the 30(b)(6) from his perspective,
23 that if we get pushed up to the wall in getting everything
24 completed from the plaintiff's perspective, I will grant the
25 request for a brief extension for the defendants to be able

1 to accomplish their 30(b)(6).

2 MR. BALDRIDGE: Thank you, Your Honor.

3 THE COURT: All right. If there's nothing further,
4 thanks to everyone. I think the meeting has been helpful, it
5 certainly helped me, and we will get an order out to
6 hopefully give some direction.

7 Let me just close with this. I really do think it's
8 important from the plaintiff's perspective to get as much on
9 the table as we can as quickly as we can because, as a matter
10 of fairness, defending a case, these folks have got to know
11 what they're really defending against to know what to go
12 after. So the sooner we can get that on the table, the
13 sooner we can get this thing really ready to get to the legal
14 issues and get it concluded, and I think that's what we all
15 want to have accomplished.

16 I believe firmly in the right and the obligation of a
17 party to supplement discovery responses and I don't think I
18 have ever precluded a party from supplementing a discovery
19 response. I would, if I thought there were bad faith in play
20 or they were trying to game the case by holding back or
21 whatever, I'm not saying I wouldn't, but typically I realize
22 that cases evolve and that things arise, so things may be
23 presented later. But I say that to you to encourage as much
24 disclosure as possible as quickly as possible.

25 And I also recognize that things change. I mean, what

1 looks one way at one point can change, and the fact that you
2 point out something as a contention and don't stay with it
3 doesn't mean I'm going to make you eat it. I mean, things
4 can change and that's all right.

5 But I think we're all better served if we can have as
6 much open disclosure here as possible and as much
7 transparency as possible so everyone can get to the
8 information.

9 And this cuts both ways. I'm not just talking to
10 plaintiffs, I'm talking to defendants as well, because on the
11 privilege log matter, I think Mr. Engel's point is well
12 taken, we may be looking at a delay if they've got to put
13 resources into a tremendously specific privilege log, but at
14 the same time there's got to be enough there so you folks on
15 the defense side know what to raise.

16 But there's some pretty clear issues that are there, to
17 me, that I can see without a whole lot more specificity, and
18 those are just the breadth of these privileges that you are
19 addressing, Mr. Baldridge, the arguments that you made just a
20 moment ago. And it may be that you're in a position, even
21 with the privilege log stated like it is now, to challenge
22 some of these matters on that basis. You may need more
23 specificity to be able to show that there are specific
24 documents that fall outside the privilege as it should be
25 defined, but especially if you feel the plaintiff is

1 overstating the privilege or asserting it in a more broad
2 fashion than it's entitled to, we can get that issue teed up
3 and try to move on it perhaps more quickly.

4 But I'll try to give you some structure that will allow
5 you to get those issues before me if you need to.

6 All right, thanks to everyone for being here this
7 morning and thanks to folks on the phone. We'll adjourn.

8 Thank you.

9 (Proceedings concluded at 10:35 a.m.)

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C E R T I F I C A T E .

UNITED STATES DISTRICT COURT:

NORTHERN DISTRICT OF GEORGIA:

I hereby certify that the foregoing pages, 1 through 49, are a true and correct copy of the proceedings in the case aforesaid.

This the 11th day of July, 2016.

/s/ Amanda Lohnaas

Amanda Lohnaas, CCR-B-580, RMR, CRR
Official Court Reporter
United States District Court